

operating duplicating equipment. Direct costs do not include overhead expenses such as the cost of space and heating or lighting the facility in which the records are stored.

(h) *Search* means all time spent looking for material that is responsive to a FOIA request, including page-by-page or line-by-line identification of material within documents. This includes both manual searches and searches conducted with a computer using existing programming. Search time does not include review of material in order to determine whether the material is exempt from disclosure.

(i) *Review* means the process of examining a document located in response to a commercial use request to determine whether any portion of the document located is exempt from disclosure. Review also refers to processing any document for disclosure, i.e., doing all that is necessary to excise exempt portions of the document and otherwise prepare the document for release. Review does not include time spent by the Commission resolving general legal or policy issues regarding the application of exemptions.

(j) *Duplication* means the process of making a copy of a document necessary to respond to a FOIA request. Examples of the form such copies can take include, but are not limited to, paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk).

(k) *Commercial use* means a purpose that furthers the commercial, trade, or profit interests of the requestor or the person on whose behalf the request is made. The Commission's determination as to whether documents are being requested for a commercial use will be based on the purpose for which the documents are being requested. Where the Commission has reasonable cause to doubt the use for which the requestor claims to have made the request or where that use is not clear from the request itself, the Commission will seek additional clarification before assigning the request to a specific category.

(l) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an

institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(m) *Non-commercial scientific institution* means an organization that is not operated on a commercial basis, as that term is defined in paragraph (k) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(n) *Representative of the news media* means a person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of news, as defined in this paragraph) who make their products available for purchase or subscription by the general public. A freelance journalist may be regarded as working for a news organization and therefore considered a representative of the news media if that person can demonstrate a solid basis for expecting publication by that news organization, even though that person is not actually employed by that organization. The best means by which a freelance journalist can demonstrate a solid basis for expecting publication by a news organization is by having a publication contract with that news organization. When no such contract is present, the Commission will look to the freelance journalist's past publication record in making this determination.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980; 52 FR 39212, Oct. 21, 1987]

§ 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of

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persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

[44 FR 33368, June 8, 1979, as amended at 45 FR 31291, May 13, 1980]

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel's reports and non-exempt 2 U.S.C. 437g investigatory materials in enforcement files will be made available no later than 30 days from the date on which a respondent is notified that the Commission has voted to take no further action and to close such an enforcement file.

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations. 41 CFR 1-1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required by the Government in the Sunshine Act, 5 U.S.C. 552b.

(10) Reports of receipts and expenditures, designations of campaign depositories, statements of organization, candidate designations of committees, and the indices compiled from the filings therein.

(11) Requests for advisory opinions, written comments submitted in connection therewith, and responses approved by the Commission.

(12) With respect to enforcement matters, any conciliation agreement entered into between the Commission and any respondent.

(13) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(14) Audit reports (if discussed in open session).

(15) Agendas for Commission meetings.

(b) Public access to the materials described in subparagraphs (a)(3) and (a)(10) through (a)(15) of this section is also available pursuant to the Federal Election Campaign Act of 1971, as amended, in accordance with the provisions of part 5 of this chapter.

(c) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(d) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.